

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

FILED  
U.S. BANKRUPTCY COURT

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**In re** :  
: **Chapter 11** 2019 CCP 10 12 D 55  
**SEARS HOLDINGS CORPORATION, et al.,** :  
: **Case No. 18-23538 (RDD)**  
**Debtors.** :  
: **(Jointly Administered)**  
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X

**CREDITORS RESPONSE TO DEBTORS' FIFTH OMNIBUS  
OBJECTION TO PROOF OF CLAIM (RECLASSIFICATION AS GENERAL  
UNSECURED CLAIMS) OF JESSE LOPEZ**

Now comes Jesse Lopez (the "Claimant"), Creditor in this bankruptcy, in response to the Debtors' Fifth Omnibus Objection to Proofs of Claims, states as follows:

1. On January 3, 2019, Claimant timely filed a Proof of Claim, claim #7114 (the "Claim") with the Debtor's claim agent asserting a priority unsecured claim in the amount of \$1,125.00. Claimant filed the Proof of Claim *pro se*.
2. On August 29, 2019, the Debtors filed the Debtors' Fifth Omnibus Objection to Proofs of Claim (Reclassification as General Unsecured Claims) (the "Objection") with the United Stated Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").
3. The sole ground(s) cited in the Objection is that the Claim(s) does not satisfy the requirements for administrative expense priority under section U.S.C. § 503(b)(9) of the Bankruptcy Code. The Objection seeks to reclassify the proof of claim as general unsecured claims.
4. The Claimant asserts the Claim against the Debtor in the sum of \$1,125.00 due pursuant to Invoice #4237920 and Invoice #4237922 (the "Invoices"). The Invoices represent the initial agreed upon wages due for work performed as identified in the Individual Security Guard Services Agreement dated September 1, 2013

attached hereto as Exhibit A. Attached hereto as Exhibit B, includes the Invoices as was filed with the original claim filed as supporting documentation.

5. In the Proof of Claim, Claimant asserts a claim against the Debtor as priority pursuant to U.S.C. §§ 503(b)(9) and 507(a)(4). The claim is entitled to priority under U.S.C. § 507(a)(4) as the total amount claimed by the Claimant are wages earned by the Claimant for work performed within 180 days before the Debtor's bankruptcy filing. It was the misunderstanding of the Claimant at the time of completing the Proof of Claim, that the Claim qualified for administrative expense priority pursuant to U.S.C. § 503(b)(9).

6. The Claimant filed an amended claim filed electronically through Prime Clerk on September 17, 2019 to correct and no longer assert 11 U.S.C. § 503(b)(9). The amended claim continued to assert priority pursuant to 11 U.S.C. § 507(a)(4).

7. The Claimant agrees that the Claim does not satisfy the requirements for administrative expense priority under section U.S.C. § 503(b)(9) as the Claim is not for the value of any goods received by the debtor within 20 days before the date of commencement of this case. The Objection should be otherwise overruled and dismissed as the Claim is entitled to priority under 11 U.S.C. § 507(a)(4). Debtor is indebted to the Claimant in the amount of \$1,125.00.

8. The Claimant requests to participate telephonically, in the hearing to consider the Objection (the Hearing), to be held on October 23, 2019 at 10:00 a.m. (Prevailing Eastern Time).

WHEREFORE, Jesse Lopez respectfully requests that the Court overrule the Objection, that the Claim not reclassify as general unsecured, and be deemed allowed as a priority unsecured claim pursuant to 11 U.S.C. § 507(a)(4) with such other and further relief as is proper and just.

Respectfully submitted,

JESSE F. LOPEZ

3101 Nicollet Avenue S  
Minneapolis, MN 55408  
651-216-5225  
paco\_16@comcast.net  
Minneapolis Police Officer

**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the foregoing document on the following, by:

- overnight delivery and properly addressed

On September 17, 2019.

Signed: Jesse Lopez

**Clerk's Office**

United States Bankruptcy Court  
Southern District of New York  
300 Quarropas Street  
White Plains, New York 10601

**United States Bankruptcy Judge:**

Chambers of the Honorable Robert D. Drain  
United States Bankruptcy Court  
Southern District of New York  
300 Quarropas Street  
White Plains, New York 10601

**Counsel to the Debtors:**

Attn: Ray C. Schrock, Esq.  
Jacqueline Marcus, Esq.  
Garrett A. Fail, Esq.  
Sunny Singh, Esq.  
Weil, Gotshal, & Manges LLP  
767 Fifth Avenue  
New York, New York 10153

**Counsel to the Committee:**

Attn: Philip C. Dublin, Esq.  
Ira Dizengoff, Esq.  
Sara Lynne Brauner, Esq.  
Akin Gump Strauss Hauer & Feld LLP  
One Bryant Park  
New York, New York 10036

DISTRIBUTION:  
Original: Loss Prevention DM  
\_\_\_\_\_  
Regional Office  
Store File Copy  
Contractor Copy

## Individual Security Guard Services Agreement

Agreement entered into this 1st day of September, 1913 by and between Kmart Corporation, Store No. 3465, having its address at 12 W. Lake St, (hereinafter referred to as "Kmart"), and Jesse Lopez, whose address is 3101 Nicollet A. S MPLS, MN 55408 (hereinafter referred to as the "Contractor").

In consideration of the mutual covenants, terms and conditions herein contained, the parties agree as follows:

1. The services described herein shall be provided by the Contractor at the above premises of Kmart at the times and in the manner set forth herein. Reasonable care and his/her best efforts shall be utilized by the Contractor in the performance of this Agreement. The Contractor shall have sole control over performance of the services and the manner in which the services are performed.
2. Each party reserves the right to terminate this Agreement upon notice to the party in the event the other party breaches or fails to perform any of its obligations in any material respect, attempts to assign or otherwise transfer its rights, obligations or duties under this Agreement, or in the event the other party becomes insolvent or proceedings are instituted by or against such party under any provision of any federal or state bankruptcy or insolvency laws. In addition, either party may terminate this Agreement without cause upon seven (7) days notice to the other party. Upon termination, there shall be nothing due from Kmart to the Contractor beyond any fees due at the date of termination.
3. The Contractor shall be responsible for and does represent that he/she shall comply with all federal, state and local laws, rules and regulations applicable to this Agreement or the performance thereof.
4. To the fullest extent permitted by law, the Contractor shall reimburse, indemnify, defend and hold Kmart harmless from and against any damage, loss, expense or penalty, or any claim or action therefor, by or on behalf of any person, resulting from or arising out of the services provided by the Contractor or performance or failure of performance of this Agreement, whether the claim is that the damage, loss, expense or penalty resulted from or arose out of the negligence or other wrongful conduct of the Contractor, Kmart or both.
5. The Contractor is and at all times shall be an independent contractor in the performance of this Agreement and shall only be entitled to receive the fee set forth in item 11 below and shall not be entitled to receive any other form of compensation or benefits, including, but not limited to, wages, workers disability compensation benefits, unemployment compensation benefits, medical benefits and pension benefits.

4066

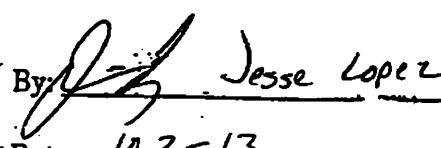
6. No modification, alteration or amendment of this Agreement shall be binding on Kmart unless in writing and signed by a duly authorized representative of Kmart.
7. The Contractor may not assign or otherwise transfer his/her rights, obligations or duties under this Agreement.
8. This Agreement shall be the entire and exclusive agreement between Kmart and the Contractor with regard to the subject matter hereof. This Agreement shall supersede all prior understandings, agreements, contracts or arrangements between the parties with regard to the subject matter hereof.
9. All costs, charges and expenses incurred in connection with the Contractor's performance of this Agreement shall be borne by the Contractor.
10. Description of services to be supplied by the Contractor, along with the times and manner of Contractor's performance, are:  
Monitor front Doors - Front Service areas -  
Front Side Walk area Assisting with Apprehensions  
Hours 5:15 PM to 10:15 PM.
11. Kmart agrees to pay the Contractor the fee for the services described in item 10 above, after the same are rendered. Said fee shall be payable on a biweekly (weekly/  
biweekly/monthly) basis at a rate of \$ 40.00 per hour.

KMART CORPORATION

CONTRACTOR

By: 

Date: 10-2-13

X By: 

X Date: 10-2-13

Exhibit B

Jess Lopez

Dms # 704631

Invoice # 4237920

Cost 250.00  
Date 9/20/18

Name: Jesse Lopez  
 Badge #: 4237  
 Social Sec. #  
 Week Ending:

## Kmart Police Payroll Form

Thursday: 9/20/18

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS	1715	2215	

Friday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Saturday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Sunday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Monday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Tuesday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Wednesday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Officer Signature

Date 9-20-18

TOTAL WEEKLY HOURS WORKED →

Total
5

General Store Manager

Date \_\_\_\_\_

JMS # 704637

Loyd 9/20/18  
Bates 234

Exhibit 12B

~~Keyed  
9/26/18  
Ann~~

Name: Jesse Lopez  
 Badge #: 4237  
 Social Sec. #: \_\_\_\_\_  
 Week Ending: \_\_\_\_\_

## Kmart Police Payroll Form

INVOICE # 4237922  
 COST : 187.50  
 DATE 9/22/18

Thursday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Friday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Saturday: 9/22/18

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS	830	2215	3,75

Sunday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Monday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Tuesday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Wednesday:

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Store	Location	In	Out	Total
3405	10 W. Lake St. MPLS			

Officer Signature

Date 9-22-18

General Store Manager

TOTAL WEEKLY HOURS WORKED →

Total	3,75
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Date \_\_\_\_\_

Duns # 784631

Batch 234  
 keyed 9/26/18

Invoice # 4237927  
Cost 250.00  
Date 9/27/18

Name: Jesse López  
Badge #: 4237  
Social Sec. #  
Week Ending:

Thursday: 9/27/18

Friday:

Saturday:

Sunday:

Monday:

Tuesday:

Wednesday:

### Kmart Police Payroll Form

704631 Dmots

	Store	Location	In	Out	Total
	3405	10 W. Lake St. MPLS	1715	2215	5
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total

TOTAL WEEKLY HOURS WORKED →

Total
5

Date

Officer Signature

Date 9-27-18

General Store Manager

Kyle 10/4/18

Baten 219

EXHIBIT B12

Invoice # A2371011

Cost 250.00

Date 10/11/18

Name: Jesse Lopez  
 Badge #: 4237  
 Social Sec. #  
 Week Ending:

## Kmart Police Payroll Form

70463 / DMM#

Thursday: 10/11/18

Friday:

Saturday:

Sunday:

Monday:

Tuesday:

Wednesday:

	Store	Location	In	Out	Total
	3405	10 W. Lake St. MPLS	1715	2215	5
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total
	3405	10 W. Lake St. MPLS	In	Out	Total

TOTAL WEEKLY HOURS WORKED →

Total
5

Officer Signature

Date 10/11/18

General Store Manager

Date \_\_\_\_\_

Keyd  
10/15/18

Batch 263

Invoice # H2371004

Cost \$ 187.50

Date 10/6/18

Name: Jesse Lopez  
 Badge #: 4237  
 Social Sec. #: \_\_\_\_\_  
 Week Ending: \_\_\_\_\_

## Kmart Police Payroll Form

DMS# 704631

Thursday:

	Store	Location	In	Out	Total
	3405	10 W. Lake St. MPLS			

Friday:

	Store	Location	In	Out	Total
	3405	10 W. Lake St. MPLS			

Saturday:

10/6/18

	Store	Location	In	Out	Total
	3405	10 W. Lake St. MPLS	1830	2215	3075

Sunday:

	Store	Location	In	Out	Total
	3405	10 W. Lake St. MPLS			

Monday:

	Store	Location	In	Out	Total
	3405	10 W. Lake St. MPLS			

Tuesday:

	Store	Location	In	Out	Total
	3405	10 W. Lake St. MPLS			

Wednesday:

	Store	Location	In	Out	Total
	3405	10 W. Lake St. MPLS			

Officer Signature

Date 10-6-18

General Store Manager

TOTAL WEEKLY HOURS WORKED

Total	30.75
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Date 10-6-18

Keyed  
10/15/18

Batch 253